IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1867 OF 1993

Krutaram Adityaram Dhyani,)
of Bombay, Hindu Inhabitant,)
aged 56 years, Occupation-Service,)
residing at 413-A Tree Shade)
Co-operative Housing Society,)
Juhu Colony, Andheri (East),)
Bombay 69.)..Petitioner

Versus

1. The Municipal Commissioner,)
Municipal Corporation for)
Greater Bombay, having his)
office at Head Office at)
Mahapalika Marg, Opp.V.T.,)
Bombay - 1.)

2. Dattatraya C.Desai,)
Deputy Municipal Commissioner (I))
Municipal Corporation for)
Greater Bombay, having his)
office on the ground floor,)
Head Office, Mahanagar Palika)
Marg, Opp. V.T., Bombay - 1.)

3. Deorao U. Dandagate,)
Education Officer,)
Municipal Corporation of Greater)
Bombay, having his Office at)
Hindu Colony, Municipal School)
Building, Lakhamsi Nappu Road,)
Dadar, Bombay - 14.)..Respondents

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Ms J.N.Pandhi i/b Shri P.U.Shah for the petitioner.

Shri Vinod Mahadik for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 16th AUGUST, 2005.

ORAL JUDGMENT: (Per R.M.S.Khandeparkar, J)

1. Heard. The petitioner challenges the order dated 30th June, 1993 under which the petitioner was compulsorily retired from his services in the Bombay Municipal Corporation. The challenge is two-fold. Firstly that the order of compulsory retirement was passed by the Deputy Municipal Commissioner who had no authority to pass such an order in view of the provisions comprised under Sections 68, 80-A(2) of the Bombay Municipal Corporation Act, 1888 read with the Regulation No.206 of the Bombay Municipal Corporation (Service) Regulations, 1989, and secondly that the action on the part of the Corporation is tainted with malafide.

2. The learned Advocate for the respondents has raised preliminary objection to the effect that the relief asked for in the matter relates to the cancellation of the order of compulsory retirement from the services of the Bombay Municipal Corporation. However, the petitioner has not joined the Bombay Municipal Corporation as party respondent to the petition. The petition has merely been filed against

the Municipal Commissioner of the Bombay Municipal Corporation and not against the Bombay Municipal Corporation. Being so, according to the learned Advocate for the respondents, no relief in the nature asked for, irrespective of the case of the petitioner, can be granted to the petitioner.

3. The learned Advocate appearing for the petitioner fairly conceding that the relief in the nature asked for is essentially against the Corporation, has sought leave to amend the petition by joining the Corporation as party respondent. The request was objected to on behalf of the respondents.

4. Undisputedly, the relief which is sought for in the matter and the dispute which is sought to be raised in the petition relates to the compulsory retirement of the petitioner from the services of the Bombay Municipal Corporation. The question of dealing with the grievance of the petitioner and the relief asked for in relation to the said grievance has necessarily to be dealt with bearing in mind that the same relates to the service conditions of the petitioner as the employee of the Bombay Municipal Corporation. Obviously, therefore, no adjudication in relation to the grievance of the petitioner can be

complete and final without the presence and hearing of the Corporation in the matter. Undisputedly, the Corporation has not been joined as the party respondent in the petition. It is not also in dispute that the Corporation is not only a proper party but necessary party to this petition.

5. The question of allowing the petitioner to amend the petition by joining the Bombay Municipal Corporation as the party respondent at this stage does not arise, as rightly submitted by the learned Advocate for the respondents. Undisputedly, the order of compulsory retirement was passed on 30th June, 1993 and we are on the 16th August, 2005. A period more than 12 years have elapsed from the date of the passing of the order of compulsory retirement. A valuable right has accrued in favour of the Bombay Municipal Corporation in relation to the said order of compulsory retirement of the petitioner. Such right cannot be taken away unless a clear case being made out by the petitioner which could entitle the petitioner to seek relief of the nature asked for even after a period of 12 years. It is true that for the purpose of writ petition, the law of limitation is not applicable, however, it is also settled law that the remedy under writ jurisdiction is to be resorted to as

early as possible and in case of delay, the same needs to be explained and justified. The laches can themselves be a justification for rejection of any relief under writ jurisdiction. In the absence of any explanation forthcoming from the petitioner for not joining the Corporation as the party respondent for all these 12 years, it is too late for the petitioner to move for an amendment to the petition to join Corporation as the party respondent. Hence, the question of permitting the petitioner to amend the petition and join Corporation as the party respondent, at this stage, does not arise.

6. The learned Advocate for the petitioner drew our attention to the decision of the Apex Court in the matter of **State of Gujarat & Anr. v. Suryakant Chunilal Shah,** reported in (1999) 1 SCC 529. That was a case wherein a clerk was promoted as Assistant Food Controller (Class II) and in 1983, certain complaints were received against him regarding permits for cement having been issued illegally by him, and therefore, he was placed under suspension on 31st May, 1983. An inquiry by the State CID was ordered against him and on the basis of the enquiry report, FIR was lodged against the said Assistant Food Controller on 23rd December, 1983. Another FIR was lodged against the

said clerk on the ground that he had fabricated rubber stamp of Government to issue bogus permits. The respondent-Assistant Food Controller requested for revocation of his suspension which was not acceded to, and by an order dated 21st July, 1988, which was passed under Rule 161 of the Bombay Civil Services Rules, 1959, the respondent was compulsorily retired from the service in public interest. Before passing of the order of compulsory retirement, the Review Committee considered the respondent's case. The records of the Review Committee were placed before the learned Single Judge of this Court from which it was revealed that there was no adverse entry or remarks in the confidential record, and in one FIR, final report had been submitted, while in the other, charge-sheet had been filed, the Review Committee considered the respondent's integrity as doubtful and therefore assessed him not fit for retention in the government service but still recommended that he should be continued in service so that he remains available for severe departmental punishment and can be removed from service on account of his alleged serious misconduct. The Secretary and the Chief Secretary considered the recommendations of the Review Committee, and they were inclined to withdraw criminal cases against the said Controller if he was prepared to accept his compulsory

retirement without protest but they were not sure of the Controller's mind and therefore they ordered his compulsory retirement. The Apex Court, while setting aside the order of compulsory retirement, held that "public interest in relation to public administration means that only honest and efficient persons are to be retained in service while services of dishonest of corrupt or those who are almost dead wood, are to be dispensed with." The law on the point of understanding the ratio of a decision is well settled. The Apex Court in the decision in the matter of **Union of India & Ors. v. Dhanwanti Devi & Ors.,** reported in (1996) 6 SCC 44 has laid down a clear decision as to how the ratio of decision is to be ascertained, and has held that in order to understand the same, one has to ascertain the facts of the case, the points sought to be raised and the decision thereupon delivered by the Court. Considering the same, the ruling in **Suryakant Chunilal Shah's case (Supra)** has to be understood in the facts of the said case. The Apex Court has also observed that a person when becomes a dead wood need not be retained in service and can be retired from the service by resorting to the provision of compulsory retirement.

7. Perusal of the order passed by the Corporation

in the case of the petitioner would disclose that the administration was of the opinion that in the public interest, the services of the petitioner were no longer required for the Corporation, and the other materials placed on record disclosed that on attainment of 55 years by the petitioner, there was a review regarding his performance and the concerned committee had granted extension for a period of one year to the petitioner meaning thereby that his performance would be screened by the competent authority and only thereafter, the order dated 30th June, 1993 was passed. Being so, the decision sought to be relied upon by the petitioner is of no help to warrant interference in the matter in hand.

8. Before parting with the matter, it is however to be observed that if the petitioner makes a representation to the Corporation, the same may be considered sympathetically by the Corporation and in accordance with the provisions of law. With these observations, the petition is disposed of. Rule stands discharged with no order as to costs.

(R.M.S.Khandeparkar, J)

(V.M.Kanade, J)